D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 144/2003.

TAHAL SINGH VS. BOARD OF REVENUE

DATE OF ORDER : 27.07.2005.

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. R.S. CHAUHAN, J.

Mr. J.L. Purohit, for the appellant.
Mr. Sudhir Sharma for the respondents.

Heard learned counsel for the parties.

This appeal is directed against the judgment of the learned Single Judge dated 8.1.2003

Brief facts which led to filing of this appeal are that the petitioner-appellant was holding a temporary cultivation lease of the land in question ad measuring 27 bighas and on that premise, he had been allotted said land on permanent basis vide order dated 19.12.1983. There were some disputes about the part of possession of the aforesaid 27 bighas ad measuring 10 bighas and 1 biswas in respect of which on 2.3.1994, an order was made directing S.H.O. to take possession of the land in question perhaps apprehending breach of peace in connection with the possession of the aforesaid land.

The petitioner, since deceased now represented by his Legal representatives and appellants, filed a suit on 5.8.84 which is Annexure 2-A, alleging that he has been dis-possessed from 10 bighas and 1 biswas of land by M/s.Pahalwan Singh and Avtar Singh, the defendants on 14.8.84. Pleading his title as Khatedari tenant as aforesaid, he asked for a decree for ejectment against the defendants and recovery of possession, alleging that possession of defendant was as trespasser.

The defendants in their written statement did not deny the fact, rather admitted, the fact about temporary cultivation lease before permanent allotment and that the permanent allotment was made in favour of the plaintiff alone. However, they laid claim to be in possession of the land as co-tenant by alleging that the land was acquired under temporary cultivation lease jointly for the benefit of Tahal Singh and his brother – father of the defendant, who had died earlier, and therefore, the permanent allotment also inured for the benefit of both brothers.

The revenue courts without noticing the clear stand taken by the defendants, that permanent allotment was made only in favour of the Tahal Singh and the defendants laid claim to

be in possession only as of right as co-tenant. The basis of alleged co-tenancy was de hors the letter of allotment, perhaps indicating to the position that prevailed under Hindu Law that the property can be acquired as joint family property in the name of Karta or other member of the family and if that is so, then property can be transferred as joint property. However, whenever such a claim is laid, it is for the person who claims title adverse to the sole ownership of the land contrary to apparent title by claiming as co-tenant, it is for him to prove his title positively by cogent evidence. If the person, claiming right to remain in possession adverse to the apparent title holders, fails to prove his co-tenancy to justify his possession to be lawful, obviously his possession is not lawful and ordinarily presumed to be as trespasser, unless he can claim otherwise to be in lawful possession under any other title. The defendant – respondent had solely traced their lawful authority to remain in possession as co-tenant, which they did not prove by leading any evidence. No other title was set up to claim their possession to be lawful.

It appears that ignoring this basic issue arising from the pleadings of the parties on admitted facts, the revenue courts laboured to find out the lawfulness of possession of defendants outside pleadings by relying on statement made in 1972 in some proceedings before Jagir Commissioner that in the

year 1972, the part of the land under temporary cultivation lease was being cultivated through his brother.

Said statement had no relevance bearing on the question whether temporary cultivation lease was a grant in favour of two brothers jointly or since 1972, the said brother or his sons cultivated land in their own right at any time. At best, it can lead to infer that some time in 1972, the defendants or their father had cultivated land on behalf of appellant – allottee.

Even assuming that the respondents defendants continued to cultivate under persuasive possession, their possession became unlawful on such permission ceased to exist. Cessation of such permission can well be presumed from the fact of filing of the suit by the plaintiff to evict them and claim of the defendants to title of the land as co-tenant.

By ignoring the aforesaid circumstances and facts emerging from pleadings of the parties and material on record, the Assistant Colonisation Commissioner seriously erred in holding the respondents to be not trespasser and in unlawful possession.

In affirming such finding, the R.A.A and B.O.R.

committed the same error successively.

The learned Single Judge holding that these findings of facts are not liable to be interfered in its extraordinary jurisdiction, had dismissed the writ petition.

We are of the opinion that by ignoring the basic issue arising from the pleadings on admitted facts resulted in error apparent on the face of record on the orders passed by the Revenue Courts, which cannot be sustained.

It is now common ground between the contesting parties that for this very claim; namely for declaration of co-tenancy, in respect of the very same land, the respondents Nos. 4 and 5 in this appeal have filed revenue suit. They successively failed in all the three revenue courts to establish their co-tenancy with Tahal Singh in respect of the land in question. Thus, on the one hand, there is an adjudicated finding that the respondents did not have right to remain in possession as a co-tenant and the appellant was exclusive tenant of the land in question, which is binding upon them, the plaintiff-appellant is entitled to remain in possession and get a decree for ejection against a person, who asserts to remain in possession with claim to title adverse to the title holder.

This special appeal is, therefore, allowed. The judgment and orders passed by the revenue courts and the Board of Revenue as well as the learned Single Judge are set aside. The suit filed by the plaintiff – appellant is decreed. The respondent Nos. 1 and 2 are liable to be ejected from the land in question and the possession of the land be delivered to the plaintiff – appellant in recognition of the right conferred in his favour.

The amount deposited by the respondents Nos. 4 and 5 pursuant to the order dated 29.9.84 passed by Assistant Colonisation Commissioner, Suratgarh shall be paid to the plaintiff – petitioner – appellant by way of the mesne profits of the land in question which was in possession of the respondents Nos. 4 and 5- the defendants. For any period since order dated 29.9.84 was passed by Assistant Colonisation Commissioner, Suratgarh, if the amount has not been deposited by the respondent Nos. 4 and 5, the appellant shall be entitled to recover the said amount as mesne profits in respect of the land in question from the respondent Nos. 4 and 5 as mesne profits for use and occupation of land. The quantification of the amount, if any, payable by the respondents Nos. 4 and 5 to plaintiff, shall be made by Assistant Colonisation Commissioner,

Suratgarh. Sunch quantified amount shall form part of decree against respondents Nos. 4 and 5.

There shall be no order as to costs.

(R.S. CHAUHAN)J. **(RAJESH BALIA)J.**

Anil/